

SPECIAL CRIMINAL APPLICATION No 1612 of 1997

Hon'ble MR.JUSTICE A.K.TRIVEDI

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5. Whether it is to be circulated to the Civil Judge?
2 to 5 No

Versus

Appearance:

MR JITENDRA MALKAN for Petitioner
Mr. AJ Desai, APP for Respondent No. 1

Date of decision: 27/04/98

Learned Advocate Mr. Jitendra M. Malkan appearing for the petitioner is not present when the matter is called out though he was informed earlier that matter shall proceed today on the basis of material produced on record. Learned APP Mr. A.J. Desai present and heard.

2. The petitioner has prayed following relief:

- (A) Direct a fresh investigation in the deliberate offence of murder of the victim through such investigation agency as this Hon'ble Court may deem fit.
- (B) Order that such compensation as deemed fit be paid to the petitioner as the sufferer on account of loss of her son the victim.
- (C) Pending hearing and final disposal of this Petition Your Lordships may be pleased to call for relevant papers pertaining to the case.
- (D) Pending hearing and final disposal of this petition your Lordships may be pleased to order such interim compensation to be paid to the petitioner, the mother of the victim, as may deemed fit.
- (E) Pass such other and further orders as may deem fit in the interest of justice.

3. Mr.Jintendra Malkan, learned advocate appearing for the petitioner has earlier contended that the petitioner is an old and aged illiterate widow belonging to scheduled caste and residing in a remote village. That son of the present petitioner Umedbhai Chhatturbhai Purabia was serving as a Police Constable during December 1991. That on 15th December 1991 at about 4.30 p.m. the petitioner learnt that her son Umedbhai Chhatturbhai Purbia had died of illness and that his body is kept at Civil Hospital, Ahmedabad. That on inquiry, the petitioner learnt the fact that her son died an unnatural death for which an offence has already been registered on 16.12.1991 by Madhavpura Police Station. That petitioner had made written representation on or about 7.3.1992 to noted social worker Shri Zinabhai Darji and the Chief Minister of Gujarat vide letter dated 21.3.1992 to assist the petitioner in making inquiry to get social justice. That criminal trial of the said offence is over and respondents No. 3 and 4 are acquitted. That the petitioner has prayed leave to file Acquittal Appeal being Misc. Criminal Application No.7009 of 1997 against the order of learned Additional City Sessions Judge, Court No.11, Ahmedabad passed in a Criminal Case No. 167 of 1992 whereby respondents No. 3 and 4 are acquitted. That thereafter petitioner has approached respondent No.2

time and again to inquire into the matter and bring home the culprit to the charge. That the petitioner did not receive any response, the present petition is filed.

4. It may be noted that the facts of unnatural death of the son of the present petitioner and offence has been registered and sessions trial was held. That against the judgment of acquittal, permission has been granted to file appeal. Further more, alternative efficacious remedy is available to the petitioner to claim damages on a competent court. Thus, the petitioner having sufficient remedy under Civil as well as Criminal law, it is difficult to hold that present petition could be maintainable for the relief prayed as stated hereinabove. Learned Advocate appearing on behalf of the petitioner on earlier occasion had failed to satisfy this court that present petition in the present form is maintainable. That having sought the adjournment on a next day, the petitioner could have proceeded with the matter. Today, learned Advocate appearing for the petitioner is absent and as such the petition has to be decided on the basis of the material produced on record.

5. On the above stated discussion, I hold that petitioner having an alternative efficacious remedy available, the present petition is not tenable at law and as such it is required to be disposed of. Hence, petition stands disposed of as rejected summarily with no order as to costs.

p.n.nair